

At Trump's urging: US Justice Department quashes Flynn prosecution

Patrick Martin**9 May 2020**

The US Department of Justice (DOJ) moved Thursday to drop all charges against retired Gen. Michael Flynn, a one-time national security advisor to President Trump, even though he had pleaded guilty more than two years ago to charges of lying to the FBI.

The action, in response to nonstop pressure from the White House, was a significant step in the transformation of the DOJ into a direct instrument of the president, indicting those whom Trump regards as political enemies and exonerating those he regards as friends and allies, and in the process dropping any pretense that the agency is an impartial and nonpartisan legal arbiter.

Attorney General William Barr defended the action and denied that it was taken in response to Trump's repeated demands that charges against Flynn be dropped, or to spare the president the necessity of using his pardon power in the Flynn case, as he has repeatedly threatened to do.

Flynn was Trump's top national security aide during the 2016 presidential campaign and became national security advisor on January 20, 2017, when Trump was inaugurated. He resigned 23 days later, after admitting that he had lied to other officials, including the FBI and Vice President Mike Pence, about his contacts with Russian Ambassador Sergei Kislyak in the months between the election and Trump's taking office.

In January 2017, Flynn spoke several times to Kislyak, reassuring him that measures taken by the outgoing Obama administration penalizing Russia for alleged interference in the US election would be revisited by Trump once he entered the White House. As a result of these assurances, Russia did not retaliate for US actions, such as the expulsion of 35 Russian embassy and consular officials, ordered by Obama to "punish" Moscow for its alleged role in supporting the Trump campaign.

The Flynn case became one of the building blocks of the investigation by Special Counsel Robert Mueller into claims that Russia had interfered in the presidential election with the goal of helping Trump against his Democratic opponent, former Secretary of State Hillary Clinton, and that the

Trump campaign had colluded with Moscow.

In December 2017, Flynn pled guilty to two counts of lying to the FBI, but his sentencing was repeatedly postponed as he continued to cooperate with Mueller in his two-year-long investigation. According to press reports, one of his main motives for cooperating was the threat that federal prosecutors would indict his son, Michael Flynn Jr., in an unrelated case involving Flynn's lobbying business.

The charges against Flynn, like those against nearly all those indicted as a result of the Mueller investigation, stemmed not from actual involvement in a plot with Russia to influence the 2016 election—no such plot existed—but from lying to federal agents who were engaged in the investigation of the alleged plot when their questions threatened to embarrass the Trump administration or uncover other unrelated misconduct.

Except for Paul Manafort, the former Trump campaign manager convicted of tax fraud in connection with his previous employment as a high-level fixer and election operative for Ukrainian politicians, all those Trump aides, advisers and associates indicted by the special counsel were charged with perjury in one form or another. None was charged with any Russia-related offense.

While Mueller claimed there was substantial evidence of Russian intervention in the election—for which he relied entirely on assurances from US intelligence agencies—he found no evidence of direct collusion between the Trump campaign and Moscow, despite the incessant claims of Democrats, such as Representative Adam Schiff, that such evidence existed and he had seen it.

The Democrats and their media allies were doing the bidding of the military-intelligence apparatus in fomenting the Russia investigation and using it to pressure Trump to adopt a more belligerent stance towards Russia than he had promised during the campaign. After the failure of the Mueller probe, the foreign policy issues were raised again in a thinly altered form in the impeachment drive against Trump over his efforts to pressure the Ukrainian government to open an investigation into former Vice President Joe

Biden, then his likely Democratic challenger now the presumptive Democratic nominee.

While the anti-Russia campaign was bogus from start to finish, Trump's response to this escalating conflict within the US ruling elite has been increasingly authoritarian. He arguably engaged in obstruction of justice in his efforts to sabotage the Mueller investigation. After the Democrats regained control of the House of Representatives in the 2018 elections, Trump installed Barr as attorney general to spearhead a policy of total refusal to accept congressional subpoenas of witnesses or documents.

Barr's handpicked choice as US attorney for the District of Columbia, Timothy Shea, intervened into the prosecution of Trump crony Roger Stone, indicted on seven counts of lying to Congress, to urge the judge to impose a much lighter sentence than called for by federal guidelines. This led to 2,000 former Justice Department officials signing a petition urging Barr to resign.

The intervention in the case of General Flynn is even more provocative, since Flynn has already admitted in court, under questioning by a federal judge, that he deliberately lied to the FBI about the subject of his discussions with Kislyak, denying that the question of the sanctions imposed by Obama had been raised, when that was the main topic.

The argument presented by the DOJ in seeking dismissal of the charges against Flynn was so flimsy from a legal standpoint that it was obviously constructed for the sole purpose of meeting Trump's demands for a whitewash of his former aide.

The court filing argues that Flynn's interview on January 24, 2017 was not conducted "with a legitimate investigative basis and therefore [the DOJ] does not believe Mr. Flynn's statements were material even if untrue." In other words, Flynn lied in response to questions the FBI had no legal basis for asking. There is, of course, no possibility that anyone not a Trump crony who was caught lying to the FBI would get off scot-free on such a basis.

At the same time, the internal FBI documents made public over the past several weeks relating to the Flynn probe demonstrate the intensely political atmosphere inside the federal policy agency, in which, in 2016 and 2017, rival factions aligned with Trump and Clinton were bitterly at war.

One email from FBI counterintelligence chief E.W. Priestap asked his colleagues, who included Peter Strzok, the lead agent in the Russia probe dubbed Crossfire Hurricane, "What is our goal?" in interrogating General Flynn. "Truth/admission or to get him to lie, so we can prosecute him or get him fired?"

The FBI played a particularly critical role in the manipulation of the 2016 election. First, it conducted an

investigation into Clinton's use of a private email server while she was secretary of state, generating a flood of negative publicity. FBI Director James Comey then held a highly unusual press conference to announce that no charges would be brought, although he condemned Clinton for carelessness.

While the FBI was conducting its Crossfire Hurricane investigation, opened in July 2016, into allegations of a Trump-Russia connection, sections of the bureau, particularly its New York office, linked to former Mayor Rudolf Giuliani, were seeking to revive the charges against Clinton.

This conflict led to two interventions in October. Early in the month, US intelligence agencies declared that Russia was intervening in the US elections in support of Trump. Then, only a week before the election, Comey announced that a new trove of Clinton emails had been uncovered, and the investigation into her email account was being reopened, an action that may well have contributed to Trump's narrow victory in the Electoral College.

The response to the decision on Flynn suggests that the political warfare in Washington will continue and even escalate. Trump boasted about the whitewash and then declared that he now wanted prosecutions to go the other way, against those who organized the campaign against him. "I hope a lot of people are going to pay a big price because they're dishonest, crooked people," he added. "They're scum."

House Speaker Nancy Pelosi and House Judiciary Committee Chair Jerrold Nadler denounced the decision to drop charges against Flynn. Nadler said, "The decision to overrule the special counsel is without precedent and warrants an immediate explanation."

Others pointed out that unless US District Judge Emmet Sullivan agrees to dismiss the charges "with prejudice," Flynn could still be prosecuted under a future Democratic administration. Sullivan has not yet responded to the DOJ filing, and he could reject it and insist on sentencing Flynn on the charges to which he pleaded guilty.

The Justice Department staff is also in turmoil. Brandon Van Grack, the lead prosecutor in the Flynn case, filed a one-line withdrawal from the case before US Attorney Shea urged that the charges be dismissed. His assistant prosecutor, Jocelyn Ballentine, did not sign the dismissal motion.



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